

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A CEASE AND
DESIST ORDER ISSUED BY THE
DEPARTMENT OF ECOLOGY TO JOHN
A. AND ESTHER NELSON

JOHN A. NELSON,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF Ecology,

Respondent,

LLOYD F. FULLER AND
MARGARET C. FULLER,

Intervenors.

PCHB No. 79-32

ORDER DISMISSING APPEAL
FOR LACK OF JURISDICTION.

This matter, the appeal of a Department of Ecology shoreline
regulatory order issued under WAC 173-14-180, came on for hearing
before the Pollution Control Hearings Board Dave J. Mooney, Chairman,
Chris Smith and David Akana convened at Seattle, Washington on April 27
1979. The hearing was continued, resulting on May 3 and concluding

on May 4, 1979. Hearing examiner William A. Harrison presided.

Appellant John A. Nelson appeared by his attorney, Stephen S. Brissett. Respondent, Department of Ecology, appeared by Robert V. Jensen, Assistant Attorney General. Intervenor, Lloyd F. and Margaret C. Fuller, appeared by their attorney, Stephen J. Crane. Reporters Jamie R. Dean and Mark Morila recorded the proceedings.

Having raised the issue of its jurisdiction over appeals from regulatory orders issued under WAC 173-14-180, the Pollution Control Hearings Board concludes that it lacks jurisdiction to hear such appeals.

RCW 43.21B.110 provides that the Pollution Control Hearings Board has jurisdiction:

" . . . to hear and decide appeals from the decisions of the department . . . the hearings board shall also have jurisdiction to hear and decide appeals from any person aggrieved by an order issued by the department . . . "

This provision, effective July 1, 1970, predates the Shoreline Management Act, chapter 90.58 RCW, effective June 1, 1971. The Shoreline Management Act provides a full scheme for enforcement and adjudication of that Act. See Nelson v. Department of Ecology and Fuller, SLS No. 79-11, issued contemporaneously with this Order. There is nothing left for the Pollution Control Hearings Board

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1 under the Shoreline Management Act.

2 We conclude from this that where Department of Ecology issues
3 an order exclusively under the Shoreline Management Act, such as
4 the regulatory order under WAC 173-14-180 here, there is
5 no jurisdiction in the Pollution Control Hearings Board to review
6 it.

7 The Pollution Control Hearings Board therefore dismisses this
8 matter for lack of jurisdiction.

9 DONE at Lacey, Washington this 11th day of June, 1979.

10 POLLUTION CONTROL HEARINGS BOARD

11 *Dave J. Rooney*
12 DAVE J. ROONEY, Chairman

13 *Chris Smith*
14 CHRIS SMITH, Member

15 *David Akana*
16 DAVID AKANA, Member

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26 CPOEP DISMISSING APPEAL
27 FOR LACK OF JURISDICTION